

IN THE UNITED STATES PATENT AND TRADEMARK OFFICE

Attorney Docket № 14967US02

In the Application of:

Jeyhan Karaoguz, et al.

Serial No.: 10/667,036

Filed: September 22, 2003

For: BILLING SUPPORT IN A
MEDIA EXCHANGE NETWORK

Examiner: HAMILTON, LALITA

Group Art Unit: 3691

Conf. No.: 7866

Electronically Filed on January 17, 2008

PRE-APPEAL BRIEF REQUEST FOR REVIEW

Mail Stop AF
Commissioner for Patents
P.O. Box 1450
Alexandria, VA 22313-1450

Dear Sir:

The Applicants request review of the final rejection in the above-identified application. No amendments are being filed with this request.

This request is being filed with a notice of appeal.

The review is requested for the reasons stated on the attached sheets

Respectfully submitted,

Date: January 17, 2008

By: /Joseph M. Butscher/
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The present application includes pending claims 1-53, all of which have been rejected. In particular, claims 1-53 stand rejected under 35 U.S.C. 102(e) as being anticipated by United States Patent Application Publication No. 2003/0151621 ("McEvilly").

The Applicants respectfully submit that the final Office Action fails to show that McEvilly describes, teaches or suggest a user defined media channel or delivery of media from a first home to a second home, as recited in the pending claims. See December 4, 2007 Response at pages 14-24. Thus, for at least these reasons, the final Office Action fails to establish a *prima facie* case of anticipation with respect to the pending claims.

The Applicants demonstrate that McEvilly does not anticipate claims 1-53. See December 4, 2007 Response at pages 14-24. For example, claim 1 of the present application recites, in part, "a user interface, at the first home, **having at least one user defined media channel**, the at least one **user defined media channel comprising a sequence of user selected and scheduled media**, the user interface supporting selection and scheduling of the media." The claim clearly recites that a **media channel**, not merely an interface or preferences, is defined by a user. McEvilly, on the other hand, merely discloses a customizable interface that allows a user to select programming from a variety of existing channels, but does not teach or suggest a **user-defined media channel** at all, let alone one where the user-defined media channel comprises a **sequence of user selected and scheduled media**. See *id.* at pages 14-17. Further, McEvilly discloses that a user selects among content and services at

his/her location, and the selected content or service is then sent to that same location.
See id.

As noted above, McEvilly simply does not describe, teach or suggest a user defined media channel. *See id.* at pages 18-22. For at least this reason, the Office Action fails to establish a *prima facie* case of anticipation with respect to the pending claims. Further, the Applicants demonstrate that the final Office Action merely indicates that McEvilly discloses a customizable user interface and personalized menu, which is by no means a **user defined media channel**. *See id.* at page 19. Additionally, the Applicants demonstrate that the portions of McEvilly relied on by the final Office Action as disclosing a user defined media channel, do not describe, teach or suggest this limitation; thereby providing further evidence that the final Office Action fails to establish a *prima facie* case of anticipation with respect to the pending claims. *See id.* at pages 19-22.

Next, McEvilly does not describe, teach or suggest "executable code enabling **creation by a first user of one or more media channels for distribution to an authorized second user at a second location** remote from the first location," as recited in independent claim 29. *See id.* at pages 21-22. Moreover, the Applicants demonstrate that the portions of McEvilly that the final Office Action relies on as disclosing the limitations noted above clearly do not describe, teach or suggest them. *See id.* at pages 21-22. Thus, for at least this reason, the final Office Action has not established a *prima facie* case of anticipation with respect to claims 29-39, for example.

The Applicants also demonstrate that McEvilly does not describe, teach or suggest delivery of media from a **first home to a second home**. *See id.* at pages 22-

23. The final Office Action wholly fails to cite anything from McEvilly that describes, teaches or suggest such a limitation. *See id.* Thus, for at least this additional reason, the Office Action fails to establish a *prima facie* case of anticipation with respect to the pending claims.

The Applicants also respectfully submit that the Office Action does not establish a *prima facie* case of anticipation with respect to claims 40-53. *See id.* at pages 23-24.

The Applicants respectfully submit that the Office Action has not established a *prima facie* case of anticipation with respect to any of the pending claims for at least the reasons discussed above and request that the outstanding rejections be reconsidered and withdrawn.

The Commissioner is authorized to charge any necessary fees, including the \$510 fee for the Notice of Appeal, or credit any overpayment to the Deposit Account of McAndrews, Held & Malloy, Account No. 13-0017.

Respectfully submitted,

Date: January 17, 2008

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